

**MINUTES**  
**REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS**  
**Monday, June 16, at 9:00 a.m.**  
**State Capitol Building, Room 303**  
**Helena, MT**

**PRESENT:** Governor Brian Schweitzer, Attorney General Mike McGrath, Superintendent of Public Instruction Linda McCulloch, Secretary of State Brad Johnson, and State Auditor John Morrison

Mr. McGrath moved for approval of the minutes from the May 19, 2008, meeting of the Board of Land Commissioners. Seconded by Mr. Johnson. Motion carried unanimously.

**BUSINESS CONSIDERED:**

**608-1            FWP: BEARMOUTH FISHING ACCESS SITE ADDITION**

Ms. Sexton stated there is no acquisition cost for the site because the land was donated by landowner Gene Tripp to the Five Valleys Land Trust, and the Five Valleys Land Trust proposes to then donate the land to FWP. The land is 21.6 acres in Granite County along the Clark Fork River.

Paul Sihler, FWP Field Services Administrator, stated this access site is located along the Clark Fork River between Missoula and Drummond. It is a brown trout site that has recovered due to Superfund restoration efforts. The property appraised at \$150,000. FWP has an existing fishing site and this proposal would expand the access.

Six public comments were received in support of the project, one of which raised the question about potential liability regarding the Superfund site. A hazardous materials assessment was completed and no indication of contamination was found. The property is being donated in keeping with Mr. Tripp's interest that the property be managed for public recreation. Mr. Sihler thanked the Five Valleys Land Trust for their work on the project.

Pelah Hoyt, Five Valleys Land Trust Conservation Project Manager, stated that it was a pleasure to work with Mr. Tripp and FWP to get the property—with its natural beauty—into public hands. The addition would allow greater access and works well with the current remediation and restoration along the Clark Fork River. Five Valleys Land Trust looks forward to working on future conservation projects with FWP.

Motion made by Ms. McCulloch to approve the access site addition. Seconded by Mr. Morrison. Carried unanimously.

**608-2            FWP: CIRCLE R RIVER RANCH ACQUISITION**

Mr. Sexton stated this is a proposal from FWP to purchase the Circle R River Ranch, which appraised at \$5.6 million, from the Conservation Fund for \$5.3 million. The land is 3976 acres in Yellowstone County along the Yellowstone River. The property contains five miles of river frontage, cottonwood stands, upland sagebrush, and ponderosa pine savannah. The acquisition provides access to previously inaccessible 4000 acres of BLM land and 640 acres of state trust land.

Mr. Sihler stated this acquisition is 30 miles east of Billings and is being purchased for both wildlife management and future development as a state park. The land is comprised of 621 acres of school trust land and 69 acres of BLM land. Mr. Sihler listed the variety of wildlife in the area and noted that the riparian habitats along the river are a conservation priority for FWP.

JUNE 16, 2008  
LAND BOARD MINUTES

Twenty written comments and 15 verbal comments were received at the public hearing. The Billings community offered strong support. Some concerns raised by adjacent landowners. One and three-quarter miles of the land is owned by Bill and Annie Rowe. The Rowes access their land by the county road that passes through the proposed acquisition. They own free-ranging cattle and their fencing is in ill repair. FWP has met with them several times over many weeks to address their concerns and has agreed to the following:

- ♦ to pay for and help repair the fences;
- ♦ to place signs along the road to indicate the property is private and not accessible;
- ♦ to limit the area to day use only until there is staffing available to allow otherwise;
- ♦ to make warden presence a priority to deter vandalism;
- ♦ to limit ATV use to designated routes only; and
- ♦ to not to open the area for use until September in order to put these measures in place.

The Conservation Fund has negotiated this deal on behalf of FWP because of time sensitivity by the landowner.

Motion made by Mr. McGrath to approve the acquisition. Seconded by Mr. Johnson.

Governor Schweitzer stated that he had recently read a letter from Martin Brown in the Billings Gazette (June 5, 2008) who had concerns about this sale. Mr. Brown's letter asserted that the state had previously been offered the land at a substantially lower rate. The Governor asked if Mr. Sihler had seen this letter?

Mr. Sihler said yes. FWP did not address Mr. Brown's concern about the property being previously offered for sale because FWP has not been able to locate any information or records within department about this previous sale proposal.

Mr. Johnson asked Mr. Sihler how the appraisal was conducted?

Mr. Sihler said that the appraisal was conducted by a certified independent appraiser with the involvement of the Conservation Fund. FWP reviewed the appraisal and determined it to be consistent with market values in the area.

Motion carried unanimously.

608-3            FWP: JAMISON HABITAT ACQUISITION PROJECT

Ms. Sexton stated that this is a fee title acquisition that would be acquired in two phases with the FWP Sheep License Fund and in cooperation with the American Lands Conservancy. The appraised value of the property is \$1,065,600 for 296 acres in Deer Lodge County. The cost is \$770,000 for Phase 1 and \$262,500 for Phase 2.

Mr. Sihler stated this is a bighorn sheep habitat project located out of Anaconda which fits with several other projects in the area for bighorn sheep and elk. Phase 1 will be closed with FWP funding at the end of June 2008, and Phase 2 would close the following December or January with funding from the Natural Resource Damage Program. Additional funding for the project came from donations from the Foundation for North American Wild Sheep, the Safari Club, and Anaconda Wildlife Expo. Aerial surveys have revealed up to 15 rams on the property, and both sheep and elk have been harvested on the property during hunting season. Fifteen people attended the public meeting—all of whom supported the project—including representatives from the Foundation for North American Wild Sheep, the Safari Club, the International Wildlife Federation, and the Anaconda Sportsmen. The property has been proposed and platted for subdivision. This easement would resolve that development potential. FWP would acquire the land at \$262,000 less than the appraised value.

Motion made by Mr. Morrison to approve the habitat acquisition. Seconded by Ms. McCulloch. Carried unanimously.

608-4            FWP: DEIRDRE HODGES ACQUISITION

Ms. Sexton stated this proposal is for 50 acres of the Hodges property in Sanders County.

Mr. Sihler stated that this area is known locally as the "sheep viewing area." The Plains Middle School raised 40,900 pennies in a penny drive to support funding for the project. The area supports a migratory bighorn sheep herd for several seasons of each year, with up to 100 sheep on the property, which can be viewed from the road and along the Clark Fork River. Funding for this project is from the FWP Sheep License Fund and private donations.

Motion made by Mr. Johnson to approve the acquisition. Seconded by Mr. McGrath. Carried unanimously.

608-5            FWP: CORNWELL RANCH CONSERVATION EASEMENT

Ms. Sexton stated this conservation easement includes a considerable amount of state school trust land. DNRC has been in negotiations and discussions with the landowners and FWP regarding the state trust land, which is over 30,000 acres. The DNRC would like to postpone this agenda item until July for further discussion regarding the state land.

Item deferred until July 2008.

608-6            TIMBER SALES:

Ms. Sexton and Governor Schweitzer thanked David Groeschl, Forest Management Bureau Chief, for his years of service to the DNRC.

*Item 608-6 was considered as a single block.*

608-6A           AVON SOUTH TIMBER SALE (SALVAGE)

Ms. Sexton stated this timber sale is 86 acres of salvage from trees recently killed by the mountain pine beetle. No old growth is involved.

608-6B           BUCK FINLEY TIMBER SALE (FIRE SALVAGE)

Ms. Sexton stated this timber sale is salvage from the Jocko Lakes Fire for 2.1 million board feet with ten harvest units totaling 425 acres. No old growth is involved.

608-6C           GAMBLER'S SECRET TIMBER SALE

Ms. Sexton stated that this timber sale is 30 air miles east of Missoula for 4939 million board feet. The stand has considerable insect and disease mortality. New road construction would be associated with the sale because some of the land belongs to the BLM.

608-6D           NORTH FORK BY TWO TIMBER SALE

Ms. Sexton stated this is a fuels reduction project that is near some development, comprising 1.9 million board feet on 539 acres. No old growth is involved. New and temporary road construction are required to harvest the units.

Motion made by Mr. Morrison to approve 608-A through 608-D. Seconded by Ms. McCulloch. Carried unanimously.

608-7            PRELIMINARY APPROVAL FOR SALE OF LAND BANKING PARCELS

Ms. Sexton stated this is for preliminary approval for three land banking parcels in Yellowstone County, all of which are surrounded by private property with no legal public access.

Motion made by Mr. McGrath for preliminary approval. Seconded by Mr. Johnson. Carried unanimously.

608-8            COFFEE CREEK LAND EXCHANGE

Ms. Sexton stated that this is for preliminary approval for a land exchange between the DNRC and Anne and Christine Orning to consolidate land ownership boundaries between state and private land, resulting in management and recreational access improvement. The exchange would be for 80 acres. The value of the land gained by the state is \$60,000 and the Ornings would gain land valued at \$49,120. The exchange meets or exceeds all land exchange criteria.

Motion made by Mr. Johnson to approve the exchange. Seconded by Ms. McCulloch. Carried unanimously.

608-9            OIL AND GAS LEASE SALE

Ms. Sexton stated the sale was held on June 10, 2008, with 45 tracts offered for lease totaling \$971,508. This is the second highest sale per acre (averaging \$45.41 per acre) amount ever received. The high bid for the sale was \$125 per acre and the largest bid total was for \$80,000.

Motion made by Mr. Johnson to approve the sale. Seconded by Mr. McGrath.

Mr. Johnson asked why the sale of the parcels in Teton County had been deferred?

Ms. Sexton stated that this area along the Rocky Mountain Front garners a great deal of information and input; including the withdrawal of federal leases. The DNRC has 8600 acres leased with stipulations in the area. By deferring the Teton County parcels for six months, it allows various parties to create proposals, such as an exchange of mineral rights, in order to avoid repeated conflicts and issues surrounding future leasing in this area.

Governor Schweitzer stated that research has been conducted to compare leases approved by the current Land Board to past Land Boards:

- ♦ Governor Racicot's term - yearly average leases were 191,000 acres annually totaling \$1.1 million per year;
- ♦ Governor Martz's term - yearly leases averaged 200,000 acres; and
- ♦ current Land Board - yearly average of 362,000 acres annually totaling \$7.2 million.

Governor Schweitzer referenced an article from the Billings Gazette praising the DNRC for withdrawing 800 acres along the Rocky Mountain Front. He noted that while the current administration has been very active about oil and gas leases, it is appropriate to defer and reconsider these particular parcels.

Mr. Johnson stated that he would like to be informed in advance if future agenda item deferments are being considered.

Motion carried unanimously.

608-10        PROPOSED COAL RULE AMENDMENTS

Ms. Sexton stated this is for final approval for revisions to state land coal leasing rules. No public comments or testimony were received.

Motion made by Mr. McGrath to approve the proposed amendments. Seconded by Mr. Johnson. Carried unanimously.

608-11        APPROVAL FOR COMMUNITIZATION AGREEMENT— DEVON ENERGY

*Item 608-11 was considered as a single block.*

608-11A      STATE WELL 21-9-27-19

Ms. Sexton stated this is for a communitized area of 1280 acres. Nine hundred twenty acres on two tracts are owned by the DNRC and comprise 71.9 percent of the communitized area. The communitization will allow the DNRC to receive its proper share of production from the spacing unit.

608-11B      STATE WELL 25-16-27-19

Ms. Sexton stated the DNRC has two tracts comprising 95.6 percent of the communitized area.

Motion made by Ms. McCulloch to approve 608-11A and 608-11B. Seconded by Mr. Morrison. Carried unanimously.

608-12        RIGHT-OF-WAY APPLICATIONS

Ms. Sexton stated the right-of-way applications comprise historic electric, historic telephone, highways and private access road easements.

Motion made by Mr. Johnson to approve the easements. Seconded by Ms. McCulloch. Carried unanimously.

**PUBLIC COMMENT:**

PPL vs. State of Montana Case Update:

Mr. McGrath stated that the Attorney General's office has been involved in litigation with several operators of hydroelectric dams, some of which went to trial and some of which have been settled. Regarding PPL, which went to trial in fall 2007, District Court Judge Honzel issued an order on Friday June 13, 2008, ruling that the state has a constitutional right to get fair market value from its property, including the banks and beds of navigable rivers. Judge Honzel adopted the state's method of determining fair market value, which is based on the net amount of dollars earned by the party that is using the property. The ruling granted the state back rent dating to 2000, when PPL acquired the dams, which amounts to \$34,748,261. The state is also entitled to compensation in the amount of \$6,207,919. Mr. McGrath thanked the litigation team that had been involved with this case.

Governor Schweitzer praised the Attorney General's office for its efforts to preserve the benefits for Montana streams and rivers.

Comments on Cornwell Ranch Conservation Easement (Item 608-5: deferred until July Land Board Meeting)

Wally Congdon, representing Five Counties, a Musselshell County planning project which addresses issues of mining, agriculture, timber economic development and community preservation, stated approval of the conservation easements on the agenda, and noted that the counties have asked for the conservation easements to include language such as:

- ♦ requiring agricultural opportunities;
- ♦ a requirement or some cooperative language stating that the owner of the land comments to local government when the surrounding ground is subdivided, preventing the negation of the original preservation intentions of the easement;
- ♦ requiring cooperation with FWP and USFWS regarding wildlife management; and
- ♦ requiring the utilization of best management practices when on the land.

Robert Sanders, Ducks Unlimited, stated support for the Cornwell easement and its essentiality for protecting Montana grasslands which are a very important habitat for a variety of wildlife species.

Lee Cornwell, Cornwell Ranch owner, stated that he attended the Land Board meeting to see if he could have some questions answered or a resolution reached [on the proposed easement], as there has been some confusion in this area.

Dan Hare, Pheasants Unlimited Regional Wildlife Biologist, stated support for the Cornwell conservation easement and noted the many benefits for the people of Montana.

Motion to adjourn made by Mr. Johnson. Seconded by Mr. Morrison. Carried unanimously.